

Ishwar Singh Vs Smt. Prem Kaur and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 16, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 1 Rule 10
Constitution of India, 1950 â€” Article 227

Citation: (2011) 162 PLR 551

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Article 227 of the Constitution of India for quashing/setting aside

order dated 17.7.2010, Annexure P1, vide which prayer of Petitioner for impleading him as a party to the suit filed by Respondent No. 1 against

Respondents No. 2 and 3 under Order I Rule 10 of the CPC (hereinafter to be referred as "the Code") has been dismissed by learned trial Court.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned

trial Court.

3. Facts relevant for the decision of present revision petition are that a suit for declaration with consequential relief of permanent injunction was

filed by Respondent No. 1 against Respondents No. 2 and 3 on the brief allegations that earlier Nanda s/o Aad Ram was owner in possession of

the property in dispute and after his death Udey Chand and Siri Chand inherited the same. Udey Chand had no son. He died before coming into

force Hindu Succession Act and hence, after his death his widow, Smt. Hukam Kaur succeeded to the entire estate of Udey Chand being a limited

owner and Smt. Prem Kaur did not inherit any share in the property of Udey Chand. It is further averred that after coming into force Hindu

Succession Act, Hukam Kaur became absolute owner of the entire estate of Udey Chand and vide a gift deed gifted her entire share of agricultural

land as well as village immovable property through registered gift deed dated 6.2.1962 in favour of Prem Kaur-Plaintiff and mutation No. 3055

was also sanctioned on 12.10.1962 in favour of the Plaintiff. Hence, since then Plaintiff has been continuing as owner in possession of the entire

estate of Udey Chand, which was inherited by Smt. Hukam Kaur, mother of the Plaintiff and Smt. Hukam Kaur had divested all her rights of the

entire estate of Udey Chand in favour of the Plaintiff. Further plea of Plaintiff is that she had alienated 18K-11M of agricultural land including half

of the rights in village immovable property in the houses, gher, plots and manure pits and all other rights in the abadi deh in favour of Ishwar Singh

and others, sons of Bhagwana through a registered sale deed No. 1763/1 dated 20.8.1973 for a consideration of Rs. 25,000/- and remained

owner to the extent of half share in the houses, gher, plots and manure pits. Further case of Plaintiff is that Defendants No. 1 and 2 got executed a

registered sale deed regarding a part of the property in dispute on 6.8.1974 by impersonating Smt. Hukam Kaur, whereas said sale deed was

never executed by Smt. Hukam Kaur and the said sale deed was not binding upon the rights of the Plaintiff and hence, this suit for a decree for

declaration that the sale-deed dated 6.8.1974 alleged to have been executed by Smt. Hukam Kaur in favour of Plaintiff is null and void. Suit was

contested by Defendants No. 1 and 2.

4. During pendency of the suit an application under Order I Rule 10 of the Code has been filed by present Petitioner for impleading him as a party,

which has been opposed by Respondents-Defendants and the same was dismissed by learned trial Court by observing as under:

6. The present suit has been filed by Prem Kaur Plaintiff against the Defendants challenging the registered sale deed No. 1691 dated 6.8.1974

alleged to have been executed by Hukam Kaur in favour of Defendants No. 1 and 2 regarding suit property. The said sale deed is marked as

Ex.D22 and is available on record. It is a registered document. At the same time, counsel for applicant also produced the copy of the sale deed

No. 1763/1, dated 20.8.1973 and sale deed No. 233, dated 12.5.1967 relied upon by the applicant. The said two sale deeds relied upon by the

applicant do not prima facie relate to the suit property as described in para No. 6 of the plaint. Since in the present suit sale deed dated 6.8.1974

executed by Hukam Kaur in favour of Defendants has been challenged, the applicant is not party to the said sale deed. The property detailed in the

impugned sale deed is prima facie not the subject matter of the sale deeds dated 12.5.1967 and 20.8.1973 relied upon by the applicant, therefore,

the applicant is not a necessary party in the present case and the judgments relied upon by the learned Counsel for the applicant are not applicable

to the aforesaid discussed facts and circumstances of present case. The present application is, therefore, dismissed.

5. It has been contended by learned Counsel for the Petitioner-applicant that as Plaintiff is having no objection for impleading the Petitioner as a

party in these proceedings, hence, learned trial Court has committed illegality in dismissing the application of the Petitioner for impleading him as a

party. It is also contended that it is the duty of the Court to ensure that if for deciding the real matter in dispute, a person is a necessary party, the

Court can order such a person to be impleaded. On the point, he has placed reliance upon Committee of Management, Ratan Muni Jain Inter

College v. Ill Additional Civil Judge, Agra and Ors. 1995 (2) L.J.R. 419, Ajay Kumar Jaiswal and Anr. v. Joginder Kumar and Ors. 2005 (2)

C.C.C. 186 , and Savitri Devi Vs. District Judge, Gorakhpur and Others, .

6. On the other hand, it has been contended by learned Counsel for the Respondents-Defendants that Petitioner-applicant is not, at all, a necessary

party to be impleaded in the present proceedings as Plaintiff had challenged sale deed, dated 6.8.1974 executed by Smt. Hukam Kaur in favour of

Defendants with regard to the suit land and that sale deeds in favour of Petitioner also do not relate to the property in dispute. It is also contended

that the present application has been filed when in the civil suit filed by Defendants against the present Petitioner-applicant, he could not succeed

and the suit was decreed in favour of Defendants regarding the property in dispute and that even appeal filed against the said judgment was also

dismissed.

7. There is no dispute regarding legal proposition that it is the duty of the court to ensure that if for deciding the real matter in dispute a person is a

necessary party, the Court can order such person to be impleaded as a party under Order I Rule 10 of the Code. However, in the facts and

circumstances of this case, this Court is to see as to whether Petitioner-applicant is a necessary party to be impleaded in this case or not.

8. Plaintiff has challenged the sale deed dated 6.8.1974 executed by her mother, Smt. Hukam Kaur in favour of Defendants with regard to the land

in dispute. Present applicant is not a party to the said sale deed. Plaintiff has not claimed any relief against the present Petitioner-applicant. Rather,

it seems that the present Petitioner-applicant and the Plaintiff are colluding. The sale deed in favour of the present Petitioner executed by the

Plaintiff did not prima facie relate to the suit property as described in para 6 of the plaint, as has been observed by learned trial Court in the

impugned order. Learned Counsel for the Petitioner has failed to satisfy this Court that the said sale deed, prima facie, relates to the property in

dispute. Moreover, even if that is so, when Plaintiff is not claiming any relief against the present Petitioner-applicant, it cannot be said that he is a

necessary party to be impleaded in this suit.

9. Hence, in view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court

in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

10. Moreover, law is well settled in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004 (1) R.C.R. (Civil) 147 that mere error of fact or law

cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent

on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross

failure of justice has occasioned thereby.

Hence, the present revision petition is, hereby, dismissed being devoid of any merit.